

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

*IN RE SUBPOENA OF JAMES COMEY BY
AUTHORITY OF THE HOUSE OF
REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA*

Miscellaneous Case No.

**DECLARATION OF DAVID N. KELLEY, ESQ. IN SUPPORT OF
MOTION TO QUASH SUBPOENA AND STAY PROCEEDINGS PENDING DECISION**

DAVID N. KELLEY, ESQ., under penalty of perjury pursuant to 28 U.S.C. § 1746,
declares:

1. I am a partner of the law firm Dechert LLP (“Dechert”), counsel to James B. Comey. I am a member in good standing of the Bar of the State of New York and the Bar of the State of Connecticut, and my admission to this Court *pro hac vice* is pending.
2. I respectfully submit this Declaration in support of Mr. Comey’s motion to quash the congressional subpoena and motion to stay proceedings pending decision, which motions are filed concurrently herewith. Unless otherwise indicated, I have personal knowledge of the facts set forth herein. Other allegations are made upon information and belief based on documents and correspondence I have reviewed.
3. James B. Comey was appointed by President Obama and served as Director of the U.S. Federal Bureau of Investigation (“FBI”) from September 4, 2013, until he was fired by President Trump on May 9, 2017.

4. While FBI Director, Mr. Comey oversaw, among numerous other investigations, the investigations of Secretary Clinton's handling of classified emails and alleged Russian interference with the 2016 general election (the "Clinton and Russian investigations").

5. While FBI Director, and after his tenure as Director, Mr. Comey provided open testimony or closed-door briefings on these matters on numerous occasions, to among others, the House Oversight and Government Reform Committee (July 7, 2016), House Judiciary Committee (September 28, 2016), House Permanent Select Committee on Intelligence (March 20, 2017), United States Senate Judiciary Committee (May 3, 2017), and the Senate Select Committee on Intelligence (June 8, 2017).

6. While FBI Director, Mr. Comey met on several occasions with full Senate and House intelligence committees as well as with chairs and ranking members of those committees to provide classified briefings regarding the Russian investigation.

7. While FBI Director, Mr. Comey possessed numerous security clearances in order to lawfully handle classified information. As is customary for departing federal officials, Mr. Comey relinquished all of his clearances and was "read out" of all the classified compartments and programs to which he had access as Director on or about August 2017, notwithstanding President Trump's announcement, many months later in July of 2018, that he intended to strip Mr. Comey of all of his clearances.

8. In or about September 2018, Mr. Comey was informed by counsel to the Judiciary Committee of the United States House of Representatives, ("Judiciary Committee"), that the Judiciary Committee, together with the House Committee on Oversight and Government Reform (the "Joint Committees"), were conducting a joint inquiry into the investigations by the FBI and Department of Justice ("DOJ") of certain conduct of former Secretary of State Hillary Clinton,

and the investigation of allegations of possible Russian interference in the 2016 Presidential election (the “Joint Committee Investigation”). *See* Exhibit B.

9. Counsel noted in particular that the Joint Committees intended to ask Mr. Comey questions about the FBI and DOJ’s investigations of Secretary Clinton’s handling of classified materials, her use of private email servers, and other matters concerning the 2016 election, as well as the FBI and DOJ’s subsequent recommendation that Secretary Clinton not be prosecuted. *See* Exhibit B.

10. In a letter dated September 21, 2018, Judiciary Chairman Bob Goodlatte and Representative Trey Gowdy requested Mr. Comey to appear voluntarily for a closed-door transcribed interview by the Joint Committees concerning “decisions made and not made by the FBI and DOJ during the 2016 election.” *See* Exhibit C.

11. Judiciary Committee Counsel also indicated that for purposes of the interview Mr. Comey would be given a temporary or “provisional” clearance so that he could discuss classified information.

12. In a letter dated October 1, 2018, Mr. Comey notified the Joint Committees that he would decline their invitation to sit for the proposed private interview but that he welcomed the opportunity to provide sworn testimony regarding the subject matters of the Joint Committee Investigation at a public hearing. *See* Exhibit D.

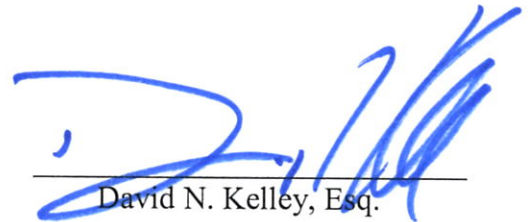
13. The Joint Committees acknowledged receipt of the October 1 letter, but made no further response until the subpoena was issued on November 21, 2018. *See* Exhibit D.

14. On November 21, 2018, the Judiciary Committee served Mr. Comey with a subpoena requiring Mr. Comey’s testimony at a closed-door deposition on December 3, 2018 at the Rayburn House Office building in Washington, D.C. *See* Exhibit A.

15. For the reasons set forth in the motion filed concurrently herewith, Mr. Comey respectfully request that: (1) the motion to quash the congressional subpoena be granted and (2) the Court order a stay in congressional proceedings.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
November 29, 2018



David N. Kelley, Esq.